

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

DORY RITROVATO,

Plaintiff

vs.

SUPREME COURT OF MONTANA and
CITY OF HELENA, MONTANA,

Defendants

Cause No. CV-7-46-H-DWM-RKS

FINDINGS AND RECOMMENDATIONS

1. Nature and summary.

Plaintiff pro se sues the City of Helena and the Supreme Court of the State of Montana alleging deprivation of rights protected under the United States and Montana Constitutions and seeking injunctive and declaratory relief. The Complaint, summarized, alleges that these rights were denied when, during both a Helena City Court trial involving a traffic citation and then on trial de novo before the District Court of the First Judicial District of Montana, Plaintiff was denied the right to be represented by an individual who was not a licensed attorney. Both Defendants have moved to dismiss. The motions are well-

taken and should be granted. Because this matter is submitted to the District Court for review of the findings and recommendations and final decision, the undersigned has discussed multiple grounds requiring dismissal although the reasons in paragraph 2 are sufficient of themselves to dispose of the matter.

2. Jurisdiction Status and standard of decision.

Giving this complaint the liberal construction accorded prose litigants, Ericson v. Pardus, 127 S.Ct. 2197, 2200 (2007), this court might possibly have federal question jurisdiction. 28 U.S.C. § 1331. In deciding a Rule 12(b)(6) motion to dismiss a court accepts the material allegations and inferences drawn from them as true. Holden v. Haqopian, 978 F2.d 1115,1118 (9th Cir. 1992). However conclusory allegations and unwarranted inferences do not defeat dismissal. Ibid. On the face of this Complaint it is clear that the issue is moot. Plaintiff seeks to enjoin a June 2006 trial. The matter went through trial in Helena City Court, trial de novo before the District Court of the First Judicial District and an appeal to the Montana Supreme Court resulting in a final judgment. See City of Helena v. Ritrovato 2007 MT 152N. Complaint Par. 7 p. 4. Reimers v. Oregon. 863 F. 2d 630, 632 (9th Cir. 1988). There is nothing left to enjoin.

The Court lacks jurisdiction over the Montana Supreme Court. Mr. Ritrovato seeks ". . . a preliminary and permanent

injunction enjoining defendants and each of them. . . .", and ". . . a judicial declaration the defendants have violated. . . .". Complaint p. 6 pars 1 and 2. The Eleventh Amendment to the United States Constitution precludes this court from entertaining a suit against a State-there are no allegations in this Complaint that would grant jurisdiction of the Montana Supreme Court. Will v. Michigan Department of State Police, 419 U.S. 58, 70, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989).

3. Issue Preclusion.

Both defendants assert, correctly, that the issues alleged here are precluded by the Montana Supreme Court decision. City of Helena v Ritrovato, 2007 MT 152N. Plaintiff litigated precisely these questions against the City of Helena's prosecution. Both claim preclusion and issue preclusion bar this suit. Xu v. McLaughlin Research Institute 2005 MT 209. 119 P. 3d 100, 105-6, 328 Mont. 232.

4. Merits.

If those reasons did not end the matter, Plaintiff's complaint is facially baseless upon the merits. A defendant in Montana does not have a right to be represented by one not licensed to practice law. Sparks v. Johnson, 826 P. 2d 928, 930 (Mont. 1992). City of Helena v. Ritrovato, supra, at Par.5. Montana's Supreme Court has exclusive power to govern representation in the courts of the State. Article VII, Sections (2), (3), Constitution of the State of Montana. See In

re Senate Bill No. 630, 523 P. 2d 484, 485, In re McCabe, 544 P. 2d 825, 827-8 (Mont. 1976). The Montana Supreme Court acted within its powers and the Complaint fails to state a claim against it. Nor is there a federally recognized right to representation by non-lawyers. United States v. Kelley, 539 F.2d 1199, 1202-03 (9th Cir 1976). The City of Helena has no voice or choice in determining who may appear in court to represent an accused. Thus the Complaint can not state a claim against the City of Helena for this additional reason. The Complaint does not state a claim against the City of Helena on the merits.

DATED this 14th day of April, 2008.

/s/ Keith Strong

Keith Strong
United States Magistrate Judge